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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record of the 9th meeting
Held at the Palais des Nations, Geneva, on Friday, 26 February 2016, at 10 a.m.

Chair: Mr. Sadi

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The meeting was called to order at 10 a.m.

Consideration of reports (*continued*)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Combined second to fifth periodic reports of Kenya (continued) (E/C.12/KEN/2-5; E/C.12/KEN/Q/2-5 and Add.1)

1. *At the invitation of the Chair, the delegation of Kenya took places at the Committee table.*

2. **Ms. Sinyo** (Kenya) said that the consultation required by law prior to ratification of treaties or international agreements was essential because such instruments became part of domestic legislation upon ratification. Hence consultation would take place with the agricultural and industrial sectors, Members of Parliament and other stakeholders before the Economic Partnership Agreement was concluded.

3. The Persons with Disabilities Act, which had been enacted long before the State party's ratification of the Convention on the Rights of Persons with Disabilities, emphasized the importance of economic and social rights, establishing a 5 per cent quota for the employment of persons with disabilities and incentives for businesses to respect that quota. The Act was being brought into line with the Convention and the Constitution, and its approach was now rights-based. In that connection, the National Council for Persons with Disabilities was raising awareness of the right to employment and compiling data on the qualifications held by persons with disabilities in order to offer them appropriate work placements. Affirmative action measures had been adopted, and a large number of persons with disabilities had been elected to the National Assembly and county assemblies in the 2013 elections. Persons with disabilities were also encouraged to access the court system so as to assert their right to non-discrimination.

4. **Ms. Onyancha** (Kenya) said that the inclusion of drugs in the Anti-Counterfeit Act had been an oversight; the Act had been reviewed and the provisions relating to drugs removed. Drugs were regulated by the Pharmacy and Poisons Board, and the use of generics was permitted. Most social security schemes in Kenya were contributory, but there were plans to make the National Hospital Insurance Fund inclusive by removing the need for contributions. Workers in the formal sector benefited from a Government-funded social security scheme, and their contributions therefore helped to provide services for those unable to contribute. A national health insurance bill would soon be passed by Parliament; it would replace out-of-pocket payments for health care with insurance schemes. There were also calls for the Government to match contributions so as to fund services for those unable to contribute, who were also aided by a health insurance subsidy, the Constituency Development Fund and measures at the county level.

5. **Mr. Kottut** (Kenya) said that the mistreatment of Kenyan domestic workers in the Middle East was a significant problem. The Government had conducted a fact-finding mission to the relevant countries, which had resulted in a report detailing the issues facing migrant workers. A return visit to Kenya by authorities from those countries had taken place in order to discuss the matter further and a temporary ban had subsequently been imposed on the recruitment of Kenyans to some countries. Additionally, recruitment agencies must be vetted by the Government, and a committee of stakeholders had been established to find a workable solution. Agreements with countries in the Middle East were being negotiated, workers were required to receive clearance before they left Kenya, and all domestic workers already abroad had to register with their local embassy. A study of the problem had compared the situation of domestic workers with Kenyans working in other

sectors in the Middle East and discovered that many domestic workers had low levels of education and did not understand their contracts. Nevertheless, it should be noted that not all domestic workers in the Middle East were mistreated.

6. The aim of the Economic Partnership Agreement was to increase economic growth, thereby boosting employment, Government revenue and the provision of services benefiting farmers. However, negative effects on small-scale farmers were also expected, and the Government planned measures to mitigate them, including restrictions on the number of agricultural products from the European Union qualifying for trade liberalization and the negotiation of simplified rules of origin that would benefit small-scale Kenyan farmers. A study into the impact of the Agreement on Kenyan farmers had found that marginal losses would be offset by benefits arising from economic growth, including improved welfare.

7. **Mr. Kihwaga** (Kenya) said that the Government's holistic approach to job creation included free primary education and the introduction of vocational training programmes. Jobs were being created at a higher rate in the informal sector than in the formal sector. The Government's ability to affect job growth was limited to pursuing policies that enabled their creation and promoting regional integration. Provisions relating to the minimum wage prioritized non-unionized workers because they were more vulnerable to exploitation; that was not to say that unionized workers were not protected. The Office of the Attorney General was conducting a comprehensive review of the international agreements that might be ratified by Kenya, including the Optional Protocol to the Covenant.

8. **Ms. Njau-Kimani** (Kenya) said that the former National Human Rights and Equality Commission had been split into three commissions, one of which was the National Gender and Equality Commission. The commissions worked with each other and held equal status, although each had a different mandate. Only one, the National Commission on Human Rights, was accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The only courts in Kenya that could be considered customary were the Kadhi's Courts, which held the same rank as magistrate's courts. As such, they could not contradict the rulings of superior courts, because appeals against their decisions were dealt with by the High Court. Furthermore, they were limited to hearing cases relating to personal laws where all parties were adherents to Islam and submitted to the court's jurisdiction.

9. Research conducted by the Ministry of Education had identified several professions in which women were poorly represented. While women had subsequently overtaken men in many of those professions, that had not been the case in engineering. The Government had therefore launched pilot schemes to train female engineers living in arid and semi-arid regions, where many oil and mineral deposits had been discovered. The Government also planned to expand those schemes to cover other areas.

10. **Ms. Chweya** (Kenya) said that female genital mutilation was an age-old practice that was firmly entrenched in some Kenyan communities. To combat the practice, the Government had passed legislation criminalizing it and establishing substantial fines as punishment, and the Office of the Director of Public Prosecutions had launched 99 prosecutions against perpetrators. Of those, five had resulted in convictions thus far. The reason there were so few convictions was because witnesses, including victims, were very reluctant to appear in court. Education and awareness-raising measures to create behavioural change were being coordinated by the Anti-Female Genital Mutilation Board, which had been established for that purpose. Survey results indicated that the prevalence of the practice was slowly but steadily declining.

11. Polygamy was a traditional cultural practice in Kenya that predated the introduction of civil and Christian marriages, and it was an acceptable practice that was provided for in

customary and Muslim law. Prior to the passing of the Marriage Act, customary marriages had not been registered, which had left women vulnerable in matters of inheritance and divorce. Under the Act, all marriages must now be registered. The Act did not, however, allow a person in a polygamous union to later contract a monogamous marriage. Several pieces of legislation had been enacted to criminalize domestic violence and provide support to victims. In addition, gender desks had been set up in all police stations, where victims could receive counselling from specially trained officers. A gender-based violence working group conducted awareness-raising activities and trained police officers on how best to implement the relevant legislation. Recent studies showed a drop in the number of domestic violence cases. Statistical data on prosecutions of such cases would be provided in writing.

12. As required under the Constitution, the Government had enacted several pieces of legislation to protect indigenous peoples' intellectual property and traditional knowledge of genetic resources. The State had also ratified several international treaties on the conservation and sustainable use of genetic resources and had drawn up regulations governing access to those resources and benefit sharing. Lastly, in the 2014/15 fiscal year, the Ethics and Anti-Corruption Commission, in its efforts to fight corruption in the country, had managed to trace property worth a total of 3.8 billion Kenya shillings (K sh). Further statistical information in that regard would be provided in writing.

13. **Ms. Gathagu** (Kenya) said that the housing bill was currently being reviewed with a view to bringing it into line with the Constitution. As part of that review process, proposals had been made to adopt cheaper, modern technologies that would make housing more affordable. Through the Kenya Informal Settlements Improvement Project, the infrastructure in slum areas had been enhanced, improving access to electricity, water and even sewage systems. Many police officers and civil servants had been able to purchase their own land through a special scheme that gave them access to subsidized mortgages. The establishment of the Housing and Urban Development State Department was an indicator of the Government's commitment to improving housing in the country.

14. The Government had complied with the judgement issued by the High Court in the case *Satrose Ayuma and 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 2 Others*. The evictions bill had been combined with another bill in accordance with the Constitution, which envisaged the consolidation of legislation submitted to Parliament. All provisions of the evictions bill had been retained in the consolidation process. Nevertheless, concerns about the consolidation had been raised and were currently being considered by Parliament. With regard to security of tenure, while a large number of land titles had been issued to individuals, the same could not be said regarding the registration of communal land. A community land bill, which would resolve that problem, was currently under consideration by the General Assembly and was expected to be adopted by the end of 2016.

15. She provided three examples of legal cases in which the Matrimonial Property Act had been applied. In those cases, the courts had recognized that a wife's non-monetary contribution to the household constituted an indirect contribution to the purchase of the matrimonial property. The targets set with regard to providing access to clean drinking water had been met and even surpassed. Currently, 82 per cent of urban households and 57 per cent of rural households had access to clean water. However, only 45 per cent of urban and 14 per cent of rural households had access to safe piped water.

16. **Ms. Sinyo** (Kenya), recognizing that child labour was a serious problem in the country, said that, despite the fact that the Children's Act amendment bill had been shelved and that a new statute had not yet been finalized, children in Kenya remained protected from child labour under the Children's Act of 2001 and various labour laws, which were still operational. In addition, Kenya had ratified the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182) and the ILO Minimum Age

Convention, 1973 (No. 138). A number of civil society organizations were working to protect children, and the Government was working in close collaboration with ILO to raise awareness about the worst forms of child labour, with positive results. The Ministry of Labour and the Federation of Kenya Employers were making great efforts to ensure that children stayed in school. Labour inspection officers were trained to ensure that children who were 16 years of age or older and employed were not subjected to conditions that might jeopardize their health or their physical or mental development. Awareness-raising efforts were being made to ensure that children benefited from the early childhood education provided by the county governments and the free primary education provided by the central Government, and that they did not leave school in order to work.

17. **Ms. Onyancha** (Kenya) said that a number of specific measures had been taken to eradicate poverty, including by increasing school enrolment rates and ensuring access to primary health care and safe drinking water. For example, in 2003, the Government had declared that primary education would be free of charge, and the Basic Education Act had made it illegal to deny a child access to education. As a result, enrolment in primary education had increased tremendously to more than 12 million as at 2015. The provision of primary education was one of the most important means of reducing future income insecurity. With that in mind, the Government was raising awareness among parents and children about the importance of education. In arid regions inhabited by nomads, boarding schools for both girls and boys had been established at the primary level to enable children in nomadic households to attend school. The Basic Education Act ensured that girls who dropped out of school because of pregnancy or for other reasons were allowed to return to school. In addition, special scholarships had been set up for girls who excelled in their studies.

18. Funds had been established to encourage entrepreneurship among women and young people and to enable them to start small businesses. A number of dams and ponds had been built to improve access to clean water, so that women could spend less time travelling to fetch water and could use that time in more productive ways. Increased female representation in the National Assembly meant that women were better able to participate in decision-making that affected them.

19. Primary health care was provided free of charge, and the number of primary health-care facilities in rural areas had been increased. While the Government had not reached its stated goal of devoting 15 per cent of the State's gross domestic product (GDP) to health care, allocations for health care had been increasing, and the true figure was not as low as 4 per cent. To obtain an accurate figure, it was necessary to count both the allocations to the Ministry of Health and the allocations made at the county level, which together totalled roughly 7 per cent of GDP. In addition, government funding for health care was supplemented by significant funds from donors.

20. The adoption of the health bill had been delayed by the enactment of the Constitution in 2010 and the need to align it with constitutional provisions on health, as well as by the need to obtain the input and proposed amendments of the counties. It had been approved by Parliament on second reading, and it would be enacted pending its approval on third reading. The adoption of the bill was eagerly awaited, as it would address many outstanding health issues and would, for the first time in Kenya, provide for the regulation and mainstreaming of traditional and alternative medical practices. In terms of health-care financing, the Government had an ambitious plan to move away from the current system of out-of-pocket financing towards an insurance-based system. In response to whether the prohibition of same-sex sexual acts had an impact on homosexual persons' access to health, she said that health-care professionals treated patients without regard to their sexual orientation.

21. Under the 2010 Constitution, abortion was not permitted unless, in the opinion of a trained health professional, there was need for emergency treatment, or the life or health of the mother was in danger, or if permitted by any other written law. Guidelines had been prepared for medical professionals who performed abortions under those conditions. In order to address the high maternal mortality rate, the Government had introduced a national reproductive health programme, which had increased the number of deliveries attended by skilled health-care staff. In addition, it had launched the "Beyond Zero" campaign, which was aimed at eradicating maternal and child mortality and mother-to-child transmission of HIV/AIDS through the provision of services to women and children by means of mobile clinics.

22. **Mr. Kedzia** said that he would appreciate an account of the access to Internet enjoyed by various social groups throughout the State party. In particular, he asked what steps the Government was taking to make the Internet available to disadvantaged and marginalized groups and to address the needs of those who were likely to have some difficulty using it, such as older generations.

23. **Mr. Dasgupta** sought clarification on the national park revenues that had been awarded to the Endorois people and asked whether the Endorois also enjoyed access to their ancestral lands, including to salt licks for their cattle. He wished to know how much of the targeted 50 per cent reduction in the number of persons living below the poverty line had actually been achieved. Given that only 45 per cent of persons in urban areas had piped water, he asked how the remaining persons, especially those living in slum areas, obtained their water.

24. **Ms. Shin** requested clarification of reports that the counter-terrorism efforts carried out by the Government had resulted in the closing down of certain NGOs. She asked which ministry was responsible for gender equality; how the Government ensured gender equality throughout the country; and how it reconciled the inherent contradiction between the State party's promotion of a gender equality policy and the fact that polygamy was still permitted under the law. She invited the delegation to comment on the case of a doctor who had reportedly provided necessary post-abortion care only to be convicted as a result and asked what steps the Government was taking to prevent such incidents and to obviate the need for abortion, for instance through sex education in schools.

25. **Ms. Bras Gomes** requested a brief account of the obstacles that the State party had encountered in implementing the government cash transfer system and the National Policy on Occupational Safety and Health.

26. **Mr. Uprimny** said that he had received reports to the effect that important judicial decisions, including several relating to the provision of compensatory redress to claimants, had still not been implemented several years after they had been handed down. Since the problem was reportedly attributable to specific provisions of the Government Proceedings Act, he asked whether the Government would support a reform of those provisions. He reiterated the questions he had asked earlier concerning the number of State officials who had been prosecuted and convicted for corruption and the importance of regulating private education.

27. **Mr. Pillay** asked for an explanation as to why the water bill 2012, which provided that every Kenyan had the right to safe water and adequate sanitation, had not yet been adopted by Parliament. He wished to know what action the State party planned to take in order to monitor and enforce the official tariff to be practised by water kiosks and private water service providers with a view to eliminating the current situation in which the poor paid exorbitant prices for water and, in some cases, even more than those with piped water systems. He wished to know what steps the Government was taking to ensure that the burden of collecting water in jerrycans that was imposed on girls or women did not hinder

their access to education or employment and that the lack of adequate sanitation facilities did not prevent girls from attending school or expose girls and women to sexual violence, especially owing to the lack of effective policing in slum areas. He wished to know what measures, including the application and enforcement of legislation, the State party had taken to require landlords to construct toilets, latrines and bathrooms in the immediate vicinity of each household and to ensure that State authorities complied with their legal responsibility to provide essential services, including water and sanitation, to all city residents without discrimination.

28. **Mr. Atangana** asked what procedure was used to recover corruptly acquired assets and whether any statistics had been gathered on how much the State had already recovered. He reiterated a question put earlier concerning abuses committed against children in school, particularly girls, and the relationship between those abuses and the high rate of teenage pregnancy.

The meeting was suspended at 11.50 a.m. and resumed at 12.10 p.m.

29. **Ms. Onyancha** (Kenya) said that the Government aimed to reduce the national maternal mortality rate to 150 deaths per 100,000 live births by 2017. It had also taken steps to ensure that mothers had access to the appropriate medicines required to prevent mother-to-child HIV transmission. State maternity services were provided free of charge. However, women who gave birth in private hospitals were liable for the full cost of their treatment. In regard to abortion, the Government was not aware of the case involving a doctor who had been imprisoned for providing post-abortion treatment. On the contrary, it had taken measures to facilitate access to such follow-up services. As for the Anti-Counterfeit Act, it had been amended to exclude medicines, which would in the future be regulated by the proposed Kenyan Food and Drug Authority.

30. **Ms. Chweya** (Kenya) said that the local authorities had paid 10 per cent, or around K Sh 7 million, of the proceeds from the park to the Endorois in 2015. The payment did not form part of the implementation of the ruling of the African Commission on Human and Peoples' Rights in the case of the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* and was in addition to the basic financial support provided by the Government to indigenous communities. The local authorities had also provided access points to the lake for the Endorois so that they could freely practise their cultural traditions.

31. The Marriage Act stipulated that only persons aged 18 or above could marry, after which age they were free to choose any form of marriage, including polygamy if they so wished, as long as they registered their union with the authorities. As to corruption, the Office of the Director of Public Prosecutions had prosecuted numerous high-profile perpetrators, including Members of Parliament and senior officials. By 2015, 96 State officials had been charged with various corruption-related offences. However, only three to four persons to date had been sentenced owing to the complex nature of the cases and the high turnover of investigators. To address the low conviction rate, the Government had prepared anti-corruption prosecution guidelines and had provided additional training to investigators and officials working on such cases.

32. **Ms. Sinyo** (Kenya) said that the 2001 Children's Act and 2006 Sexual Offences Act prohibited child abuse and child sexual exploitation and set forth numerous protection measures. The Government had established the National Council for Children's Services and eight child protection centres across the country to identify and support vulnerable children. It had also adopted the Basic Education Act which prohibited child abuse by teachers and had introduced community surveillance schemes. In addition, a round-the-clock telephone hotline had been made available for children and members of the public to report cases of child neglect or abuse. The Government had also improved the juvenile

justice system and made courts more child-friendly. It had worked closely with the police to ensure that officers handled criminal cases involving children sensitively and held children separately from adults.

33. **Mr. Kottut** (Kenya) said that all levels of government conducted gender mainstreaming activities. At the national level, every ministry had its own gender mainstreaming department in addition to access to the National Gender and Equality Commission. The local authorities also had their own gender mainstreaming divisions. The Government conducted regular reviews of each Ministry's performance, including its work on gender issues.

34. **Ms. Gathagu** (Kenya) said that the Government aimed to provide clean piped water to every household in the country. Currently, around 45 per cent of urban households and 14 per cent of rural households had access to the national water supply network. Efforts had been made to increase the availability of potable water, particularly in remote and rural areas, and additional clean water sources had been provided within a closer proximity to rural communities. The amended 2002 Water Act was before parliament for adoption. There was a backlog in bills pending consideration, but it was hoped that the amended Act would be enacted before the end of 2016. As to sanitation facilities provided by landlords, the Landlord and Tenant Act clearly stipulated that landlords were required to provide adequate water and sanitation facilities for their tenants.

35. **Ms. Njau-Kimani** (Kenya) said that the Government remained committed to upholding high educational standards in all schools and had established the Education Standards and Quality Assurance Council to ensure that both public and private students received a high-quality education. Given the voluntary nature of the existing Code of Ethics for Business, the Government intended to develop a national action plan on business and human rights to support the implementation of the Code in line with the United Nations Guiding Principles on Business and Human Rights. It had also established an occupational health and safety fund in addition to the occupational health and safety framework to ensure the safety of workers. Similarly, steps had been taken to introduce an occupational diseases authority and fund to support persons diagnosed with illnesses or injuries relating to their occupation. Regarding social protection, the Government had adopted policies to strengthen the national social protection mechanism and to ensure that vulnerable persons received the appropriate support and assistance on a timely basis.

36. The national NGO Coordination Board was responsible for setting the official registration criteria that must be met by NGOs. In the event that NGOs failed to meet those standards, their official registration would be withdrawn, which bore no relation to the existence of ongoing anti-terrorism measures. According to 2015 data, around 54 per cent of the population had access to the Internet, including in remote and rural communities. The Government had also increased the number of national services and official application processes available online. Further information on the number of illiterate and older persons who had access to the Internet would be provided in writing at a later date.

37. **Mr. Dasgupta**, thanking the delegation for its candid and constructive replies, said that he welcomed the marked progress made by the State party towards the implementation of the Covenant at the legal and legislative level. Further efforts would be required to ensure that the remaining bills relating to economic, social and cultural rights pending before Parliament were adopted without undue delay.

38. **Ms. Njau-Kimani** (Kenya) thanked the Committee members for their detailed comments and said that the recommendations and observations emanating from the dialogue would help the Government to translate the provisions under the Covenant into reality.

The meeting rose at 12.45 p.m.